



## INTRODUCTION

In 1994, the Court approved and ordered implementation of the Settlement Agreement between the parties. Order of Final Approval of Settlement Agreement, dated August 29, 1994 (“Settlement Agreement”). The Court subsequently ordered the implementation of the Milestone Plan in 1999 as a remedial order for enforcement of the Settlement Agreement. Order of October 19, 1999 (“1999 Remedial Order”). The Court also appointed the Child Welfare Policy and Practice Group (“CWPPG”) as the Court Monitor (“Monitor”). *Id.* ¶ 2. The Court based the 1999 Remedial Order on findings that Defendants had failed to comply with terms of the original Settlement Agreement.

In August 2002, based on concerns regarding Defendants’ continued noncompliance, Plaintiffs filed a motion to enforce the Court’s 1999 Remedial Order. Plaintiffs’ Motion to Enforce the Court’s 1999 Remedial Order and Settlement Agreement, dated August 22, 2002 (“Motion to Enforce”). After a hearing and testimony on the Motion to Enforce, the Court requested that the parties initiate negotiations and determine whether they could reach a stipulation to address concerns regarding Defendants’ noncompliance. In March 2003, the parties reached a stipulated agreement. Stipulation to Enter Order to Enforce the Court’s 1999 Remedial Order and Settlement Agreement, dated March 17, 2003 (“Stipulation”). The Court approved and ordered implementation of the terms of the Stipulation. Order of March 17, 2003.

Defendants have had ample time since the Court’s 2003 Order to implement provisions of the Stipulation and the 1999 Remedial Order calling for the implementation of the Milestone Plan. In addition, the Monitor has filed numerous reports and other sources have documented the work that the Division of Child and Family Services

(DCFS) has made towards compliance with the Court's orders. Based on these reports, DCFS appears to be making progress; however, numerous hurdles remain before DCFS achieves substantial compliance with all of the Court's orders.

**I. DCFS PROGRESS IN COMPLYING WITH THE 1999 COURT ORDER TO IMPLEMENT AND MEET THE TERMS OF THE MILESTONE PLAN**

To comply with the Court's 1999 Remedial Order, Defendants must complete 113 tasks within timelines set forth in the Milestone Plan, and meet the standards of two assessment instruments established under the Milestone Plan: the Case Processing Reviews ("CPRs") and the Qualitative Case Reviews ("QCRs"). For the CPRs, the Monitor conducts an annual review of approximately 50 case processes that are routinely performed in individual child welfare cases. In its most recent annual report, the Monitor reviewed the records of 766 cases for the CPR assessment. *See* CWPPG Annual Compliance Report, dated March 8, 2004, at 22 ("2004 Annual Report"). The Milestone Plan requires DCFS to meet the standard established for each case process at a level of 85% for 43 essential processes and a level of 90% for 9 critical processes. *Id.* at 28.

In addition, through the terms of the 1999 Court Order, the Monitor conducts QCRs that consist of a more detailed review of at least 24 cases in each of five major regions in the state. The QCRs have two major parts: a Child and Family Status measure and a System Performance measure each comprised of 11 individual indicators or domains. DCFS must meet the standards established under the Milestone Plan and have an overall compliance average of 85% on both the Child Status and System Performance indicators for at least two consecutive years. Further, for each of six core indicators under System Performance, DCFS must score at 70% or above.

### **A. Completion of Milestone Tasks**

According to the Monitor's 2004 Annual Report, DCFS completed 93% of the tasks due by September 30, 2003. *Id.* at 3. While compliance with this criteria is relatively high, the Monitor notes in the Annual Report that DCFS must still complete additional tasks including "full implementation of the mentoring implementation and the operation of a vigorous and effective Quality Assurance (QA) Committee in all regions statewide." *Id.* at 21. Defendants have not provided information to confirm completion of these tasks since the Monitor submitted the 2004 Annual Report.

### **B. Case Processing Reviews**

In the 2004 Annual Report, the Monitor measured 52 case processes that are to be performed routinely in child welfare cases. Defendants met the standards for only 19% of the case processes. *Id.* at 28. The Monitor's report indicates that the CPR scores are based on 2002 data. Nonetheless, DCFS' overall CPR scores have remained low and virtually unchanged for the past four years. *Id.* at 31.

Defendants failed to meet CPR standards that are likely to have significant impact on children and families. For example, DCFS has consistently scored poorly on the case process that assesses whether DCFS provided the out-of-home care provider with basic available information essential to the child's safety and the safety and welfare of other children. DCFS provided this information only 46% of the time. *Id.* at 25.

Defendants also performed poorly on several other CPR measures related to safety. On CPR measures such as follow-up for medical treatment or evaluation; timely completion of service plans for children; and initiating recommended services for family and children in a timely fashion, Defendants scored below 60%. *Id.* at 25-27. Despite

scoring poorly on the CPRs for the last four years, Defendants have yet to identify the systemic reasons for their poor performance. The Monitor has specifically recommended that DCFS “develop and implement a plan for improvement of performance on case process requirements. The foundation of the plan should be based on a thorough understanding of why performance is lagging.” *Id.* at 7. Plaintiffs agree with this assessment. Defendants have not produced any such report to the Plaintiffs. Without developing a thorough understanding of the reasons for noncompliance, Defendants will not likely develop a path to reach compliance with the Milestone Plan’s CPR standards.

### **C. Qualitative Case Reviews**

Although no region met all of the QCR standards in the Monitor’s 2004 Annual Report, DCFS has recently made promising strides in some of its more recent regional QCR reports. Plaintiffs’ counsel participated in two of the Monitor’s recent QCR reviews in the Southwest and Salt Lake regions. The Utah Department of Human Services’ (“DHS”) Office of Services Review (OSR) and the Monitor submitted preliminary data indicating that both of these regions met the Milestone Plan’s criteria for compliance with the QCR standards. If the preliminary data does not change, the results in these two regions mark a substantial step forward towards meeting the overall QCR compliance requirements. In addition, all regions -- with the exception of the Northern region -- recorded significant improvement over their past QCR performances.

While the news from the Southwest and Salt Lake regions is indeed heartening, this information is tempered by the continued lack of compliance in the Western, Northern,

and Eastern regions. Further, under the Milestone criteria, a region must meet compliance standards for two years before it may exit.

The fact that at least two regions appear to have met the QCR performance standards, and others are coming much closer, demonstrates that the Milestone Plan's QCR standards are not unattainable or unrealistic. Plaintiffs consider this recent success evidence that there is little or no need to make significant adjustments to the QCR standards. Further, the success of the two regions may also be attributed to DCFS' implementation of provisions from the Court's 2003 Order requiring for expedited training of caseworkers and an increase in caseworkers to reduce workload.

## **II. DCFS HAS GENERALLY MET CONDITIONS SET FORTH IN THE 2003 COURT ORDER**

Under the terms of the 2003 Stipulation, DCFS agreed to address areas related to training its staff; hiring and maintaining an adequate number of caseworkers and trainers; completing and implementing Practice Model policies; and implementing an effective system for the administration of flexible funds to meet the unique needs of children and families. According to all written and oral reports from the Monitor, Defendants have complied with the bulk of these requirements. On the other hand, Plaintiffs have not received confirmation from the Monitor regarding a few critical items.

First, the training on the use of flexible funds for both current and new caseworkers remains incomplete. Stipulation ¶¶ I (D)- (F). The Monitor has confirmed that DCFS has provided training for managers and finance personnel regarding flexible funds and developed a flexible fund policy as required by the Stipulation. The Stipulation included training for caseworkers to ensure that they make appropriate use of flexible fund resources to better serve the children and families on their caseloads. Without

completing this training, Plaintiffs have concerns that the full benefits of the flexible funds are not reaching the children and families most in need of these resources.

Second, the Monitor has confirmed that DCFS has met most of its obligations regarding general staff training. Plaintiffs still await information regarding the Monitor's observations of DCFS' training sessions. *Id.* ¶ III (E). The Stipulation includes a provision requiring the Monitor to make a limited number of observations of DCFS' Practice Model training sessions for purposes of quality assurance. While the completion of training mandates is important, maintaining a high level of quality and consistency is critical for long-term improvements in both DCFS' practice and ability to meet Milestone performance criteria.

Finally, the Monitor has confirmed that DCFS has met the hiring standards to employ 45 additional caseworkers and trainers. Further, the Monitor has not reported any lags in hiring replacement workers. Therefore, at this date, Plaintiffs have no reason to question DCFS' compliance with the new staff requirements in Section IV of the Court Ordered Stipulation.

### **III. PROGRESS IN NEGOTIATIONS TO DEVELOP STIPULATION FOR TRIMMING THE MILESTONE PLAN**

The Parties have reached preliminary agreement on a number of items for trimming DCFS' obligations under the Milestone Plan. Plaintiffs anticipate that the parties will be able to present a new stipulation for the Court's approval at or prior to the upcoming Status Conference. The parties did not negotiate for a significant period due to Defendants' need to focus on issues that arose during Utah's legislative session. As a result, the parties did not have adequate time to reach agreement on all issues originally submitted by the Defendants. Although all issues are not resolved, should the parties

finalize their preliminary agreement, they will have largely accomplished the Court's request of trimming the Defendants' obligations under the Milestone Plan without unduly compromising the safety and well-being of the children and families served by DCFS.

#### **IV. MISCELLANEOUS INFORMATION**

##### **A. FEDERAL CHILDREN AND FAMILY SERVICE REVIEWS**

In 1994, Congress first mandated that the United States Health and Human Services Department (HHS) develop a system for auditing the case practices of every state's child welfare system.<sup>1</sup> HHS finally adopted an auditing system, the Children and Family Service Reviews (CFSRs) in January 2000.<sup>2</sup> From early in 2001 through the present, HHS conducted CFSRs in all 50 states to assess each state's performance of each state on a variety of criteria, including four factors measuring safety and permanency and three factors measuring child and family well-being outcomes. While the federal CFSR conducted in Utah by HHS has no direct bearing on DCFS' obligations for meeting the Court's orders, HHS' findings in the audit are consistent with some of the Monitor's findings. The CFSR is by no means the standard used to determine compliance with the Milestone Plan. Plaintiffs simply reference the CFSRs as an illustration of how other independent sources have found similar systemic problems with DCFS that need to be addressed.

HHS recently completed its review of all 50 states. None met all of the requisite standards for the seven measures. HHS conducted its CFSR of Utah in April 2003. In its Final Report issued on September 4, 2003, HHS concluded that Utah was in substantial conformity with only one of four safety and permanency outcomes and only one of three

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<sup>1</sup> See 42 U.S.C. § 1320a-2a. Pub.L. 103-432 Title II, §203(a).

<sup>2</sup> See 65 Fed. Reg. 4020 (January 25, 2000), codified at 45 CFR §§ 1355.31-37.



Child and Family Well Being Outcomes. *See* HHS Administration for Children and Families Final Report: Utah Child and Family Services Review, September 4, 2003 (“HHS Report”).<sup>3</sup> HHS did not review nearly the number of cases as the Monitor and did not use the rigorous standards mandated by the Milestone Plan. Nonetheless, a few of HHS’ findings are noteworthy because HHS provided some positive comments on DCFS’ system including high rates of adoption of foster youth. However, HHS also corroborated some of the Monitor’s recent CPR results.

For example, HHS found that DCFS did not meet substantial compliance with the first safety outcome measure of ensuring that children are first and foremost, protected from abuse. HHS found “inconsistent practices with respect to the timeliness of initiating a response to child maltreatment reports and establishing face-to-face contact with children and families.” HHS Report at 5. Workers had particular problems in seeing children within the required statutory time frame. In the recent CPRs, DCFS also failed to meet the Milestone Plan’s compliance criteria for face-to-face contact with children for at least three CPR standards. 2004 Annual Report at 23-24.

Similarly, HHS also found that DCFS was not in substantial conformity with its first well-being outcome measure requiring that the child welfare agency ensure that families have enhanced capacity to provide for their children’s needs. HHS cited several instances in which parents should have been involved in case planning, but were not included. Further, HHS concluded that caseworkers were not visiting parents enough to “monitor the safety and well-being of the child or promote attainment of case goals.” HHS Report at 39. In the Monitor’s recent CPR findings, DCFS failed to meet

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<sup>3</sup> Plaintiffs did not attach the Federal Report, but should the Court decide that it needs a copy, Plaintiffs will provide the Court and all parties with a copy of the full report at the Status Conference hearing.

compliance standards for including parents in Child and Family Case planning meetings. 2004 Annual Report at 27. The Monitor also found that DCFS failed to meet compliance standards for making visits to parents for children in home-based care. *Id.* at 25.

**B. PARTIES HAVE NEGOTIATED PAYMENT OF ATTORNEY FEES**

In the past this Court has twice issued written decisions awarding Plaintiffs attorneys' fees and costs. Based on the principles of those two decisions, the parties have settled two additional claims for attorney fees, once in 2002 and again in 2003. Plaintiffs have been paid for their attorneys' fees and costs up to August 2003. Plaintiffs are pleased that the parties were able to negotiate these issues without asking for the Court's intervention.

Dated this \_\_\_\_\_ day of May 2004.

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